

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 7 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Amendment 7 would divide the eastern zone commercial quota for the Gulf migratory group of king mackerel into equal quotas for the Florida east and west coast fisheries, further divide the quota for the west coast sub-zone into equal quotas for hook-and-line and run-around gillnet harvesters, and allow persons to fish under the gillnet quota in the west coast sub-zone only aboard vessels that have endorsements on their Federal commercial mackerel permits to fish with gillnets in that sub-zone. The intended effect of this rule is to equitably allocate the eastern zone commercial quota among users and avoid the negative social and economic emergencies related to a recent, disproportionately large, west coast harvest in the commercial fishery for Gulf group king mackerel off Florida.

**DATES:** Written comments must be received on or before July 11, 1994.

**ADDRESSES:** Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

Requests for copies of Amendment 7, which includes a regulatory impact review/initial regulatory flexibility analysis (IRFA) and an environmental assessment should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, suite 331, Tampa, FL 33609-2486, FAX 813-225-7015, or to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, suite 306, Charleston, SC 29405-4693, FAX 803-769-4520.

Comments regarding the collection of information requirement contained in this proposed rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Mark F. Godcharles, 813-893-3161.

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP. The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented through regulations at 50 CFR part 642 under the authority of the Magnuson Fishery

Conservation and Management Act (Magnuson Act).

#### Background

During the previous fishing year (July 1, 1992, through June 30, 1993), the commercial quota for king mackerel from the eastern zone of the Gulf of Mexico migratory group was reached, and the fishery was closed, on January 13, 1993, before fishermen on the east coast of Florida could harvest an equitable share. The record low catch of the east coast king mackerel fishery constituted social and economic emergencies. Accordingly, by emergency interim rule (58 FR 10990, February 23, 1993), the commercial king mackerel fishery in the exclusive economic zone (EEZ) off the east coast of Florida was reopened from February 18 through March 26, 1993, under a possession limit of 25 fish per vessel per day.

To avoid a similar, disproportionately large harvest on Florida's west coast during the 1993/94 fishing year and to allow sufficient time for the Councils to develop more permanent remedial action, the eastern zone commercial quota for the Gulf migratory group of king mackerel was divided into equal quotas for the Florida east and west coast sub-zones by an emergency interim rule (58 FR 51789, October 5, 1993). Additional regulations, which established daily vessel trip limits in each of the sub-zones, were implemented under the framework procedure for adjusting FMP management measures (58 FR 58509, November 2, 1993). The daily vessel trip limits were intended to reduce daily catches, thus preventing market gluts, extending the harvest season, and reducing the likelihood of exceeding king mackerel quotas.

#### Amendment 7

Amendment 7 proposes to: (1) Continue in effect the division of the eastern zone commercial quota for Gulf migratory group king mackerel into equal quotas for the Florida east and west coast sub-zones that were established in the emergency interim rule of October 5, 1993; (2) divide the Florida west coast sub-zone quota equally between the hook-and-line and run-around gillnet harvesters; and (3) allow persons to fish under the gillnet quota in the Florida west coast sub-zone only aboard vessels that have endorsements on their Federal commercial mackerel permits to fish with gillnets in that sub-zone.

Rationale supporting the division of the eastern zone commercial quota for the Gulf migratory group of king

#### DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 940553-4153; E.D. 050394A]

RIN 0648-AE98

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

mackerel into equal quotas for the Florida east and west coast sub-zones was included in the emergency interim rule and is not repeated here. Rationale for implementation of equal sub-quotas for hook-and-line and gillnet sectors in the Florida west coast sub-zone and for allowing the use of gillnets in the west coast sub-zone only aboard vessels with permits with endorsements for use of such gear is discussed below.

Equal quotas in the west coast sub-zone for hook-and-line and gillnet fishermen, as proposed in this rule, will provide equitable sharing of the harvest of the annual quota between users of these two gear types, which are the only gears allowed to harvest Gulf group king mackerel. Depending on seasonal arrival of migrating schools and prevailing fishing conditions, the fishing power of either gear sector is sufficient to harvest a major and disproportionate share of the quota before the other sector could take an equitable share. The recent daily production of the 16-20 large gillnet vessels in the fishery and weekly catches of 80-100 hook-and-line vessels have demonstrated capacity of either gear sector to take the west coast sub-zone quota quickly. The daily harvesting capability of the hook-and-line users is not as great as that of gillnets. In December 1993, within a 24-hour period, the gillnet fleet landed in the lower Florida Keys approximately 250,000 pounds (lb) (113,398 kilograms (kg)) of king mackerel, which was 29 percent of the west coast sub-zone quota. Total gillnet production could easily double if catches for most of the large gillnet vessels approach their maximum holding capacity, which may be 50,000 pounds (22,690 kg) for the largest of these vessels. During the last two weeks of December 1992, the Key West hook-and-line fleet harvested approximately 380,000 pounds (172,365 kg) of king mackerel, which was 44 percent of the quota.

Implementation of the requirement for a gillnet endorsement on the Federal commercial mackerel permit would promote equitable harvest by the two gear harvesting sectors of the west coast sub-zone quota. The endorsement would restrict the gillnet users to their respective quota by counting all Gulf group king mackerel from the Florida west coast sub-zone harvested by vessels with gillnet endorsements against the gillnet quota. Except in the initial year of implementation, a vessel owner or any succeeding owner would have an opportunity to obtain the endorsement only during June each year, immediately prior to the July 1 commencement of the next fishing year. Once an owner or a succeeding owner

obtains a gillnet endorsement, that individual and the designated vessel would be bound by the requirements of the endorsement for the entire fishing year in which it is issued, i.e., the endorsement could not be rescinded within the year issued. In 1994, the time frame for obtaining the endorsement would be immediately following publication of the final rule to implement Amendment 7.

Implementation of Amendment 7 would ensure equitable access to the king mackerel resource by fishermen in the Florida east and west coast fisheries, and equitable access by gear type in the west-coast fishery. If approved, this rule would be effective early in the 1994/95 fishing year, which commences July 1, 1994, before a substantive commercial king mackerel fishery begins in the east coast sub-zone off Florida.

Additional background and rationale for the measures discussed above are contained in Amendment 7, the availability of which was announced in the Federal Register on May 6, 1994 (59 FR 23681).

#### Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Councils prepared an IRFA as part of Amendment 7, which concludes that this proposed rule, if adopted, may have a significant economic impact on a substantial number of small entities. Specifically, equal division of the eastern zone quota of Gulf group king mackerel between the east and west coast sub-zones is expected to redistribute revenues among the participants in the fishery. Such redistribution is expected to approximate the historical distribution of revenues but may result in individual redistributions exceeding five percent of the revenues of some participants during the 1994/95 fishing year. All participants in the fishery are small entities. Copies of the IRFA are available (see ADDRESSES).

Section 642.4(m) of this proposed rule, concerning applications for gillnet endorsements on vessel permits, contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing

the collection of information. Send comments regarding this reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see ADDRESSES).

#### List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 26, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 642 is proposed to be amended as follows:

#### PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.4, new paragraph (m) is added to read as follows:

#### § 642.4 Permits and fees.

##### (m) Gillnet endorsement.

(1) For a vessel to use a run-around gillnet for king mackerel in the Florida west coast sub-zone (see § 642.25(a)(1)(i)(B)), a vessel for which a king and Spanish mackerel permit has been issued under this section must have a gillnet endorsement on such permit. Such permit and endorsement must be on board the vessel.

(2) An owner of a permitted vessel may add or delete a gillnet endorsement on a permit by returning to the Regional Director the vessel's existing permit with a written request for addition or deletion of the gillnet endorsement. Such request must be postmarked or hand delivered during June, each year.

(3) A gillnet endorsement may not be added or deleted from July 1 through May 31 each year, any renewal of the permit during that period notwithstanding. From July 1 through May 31, a permitted vessel that is sold, if permitted by the new owner for king and Spanish mackerel, will receive a permit with or without the endorsement as was the case for the vessel under the previous owner. From July 1 through May 31, the initial king and Spanish mackerel permit issued for a vessel new to the fishery will be issued without a gillnet endorsement.

(4) The provisions of paragraph (m)(3) of this section notwithstanding, the initial requests for gillnet endorsements must be postmarked or hand delivered during the 45-day period commencing

on the first day of effectiveness of the final rule implementing this measure.

3. In § 642.7, paragraphs (p), (s), and (u) are revised, paragraph (t) is redesignated as paragraph (w), and new paragraphs (t) and (v) are added to read as follows:

**§ 642.7 Prohibitions.**

(p) After a closure specified in § 642.26(a), sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter a king or Spanish mackerel of the closed species/migratory group/zone/sub-zone/gear type, as specified in §§ 642.22(c), 642.24(a)(4), and 642.26(b)(3).

(s) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.28(a) or § 642.28(b)(1)(ii), or transfer at sea such king mackerel, as specified in § 642.28(e).

(t) In the Florida west coast sub-zone, possess or land Gulf group king mackerel in or from the EEZ aboard a vessel that uses or has aboard a run-around gillnet on a trip when such vessel does not have on board a commercial permit for king and Spanish mackerel with a gillnet endorsement, as specified in § 642.28(b)(2)(i).

(u) In the Florida west coast sub-zone, transfer at sea Gulf group king mackerel taken by a vessel for which a commercial permit for king and Spanish mackerel with a gillnet endorsement has been issued, as specified in § 642.28(e).

(v) Violate any prohibitions or restrictions for the prevention of gear conflicts that may be specified in accordance with § 642.29.

4. In § 642.25, paragraph (c) is removed and paragraphs (a)(1) introductory text and (a)(1)(i) are revised to read as follows:

**§ 642.25 Commercial allocations and quotas.**

(a) \* \* \*

(1) The commercial allocation for the Gulf migratory group of king mackerel is 2.50 million pounds (1.13 million kg) per fishing year. The Gulf migratory group is divided into eastern and western zones separated by a line extending directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to the outer limit of the EEZ. Quotas for the eastern and western zones are as follows:

(i) 1.73 million pounds (0.78 million kg) for the eastern zone, which is further divided into quotas as follows:

(A) 865,000 pounds (392,361 kg) for the Florida east coast sub-zone, which is that part of the eastern zone north of a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude); and

(B) 865,000 pounds (392,361 kg) for the Florida west coast sub-zone, which is that part of the eastern zone south and west of the Dade/Monroe County, Florida boundary (25°20.4'N. latitude), which is further divided into quotas by gear types as follows:

(1) 432,500 pounds (196,179 kg) for vessels fishing with hook-and-line gear; and

(2) 432,500 pounds (196,179 kg) for vessels fishing with run-around gillnets.

5. Section 642.26 is revised to read as follows:

**§ 642.26 Closures.**

(a) *Notice of closure.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will close the commercial fishery in the EEZ for king mackerel from a particular migratory group, zone, sub-zone, or gear type, and for Spanish mackerel from the Gulf migratory group, when the allocation or quota under § 642.25(a) or § 642.25(b)(1) for that migratory group, zone, sub-zone, or gear type has been reached or is projected to be reached. The commercial fishery for Atlantic group Spanish mackerel is managed under the commercial trip limits specified in § 642.27 in lieu of the closure provisions of this section.

(b) *Fishing after a closure.* On and after the effective date of a closure invoked under paragraph (a) of this section, for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a)—

(1) A person aboard a vessel in the commercial fishery may not fish for king or Spanish mackerel in the EEZ or retain fish in or from the EEZ under a bag limit specified in § 642.24(a)(1) for the closed species, migratory group, zone, sub-zone, or gear type, except as provided for under paragraph (b)(2) of this section.

(2) A person aboard a vessel, the permit for which indicates both commercial king and Spanish mackerel and charter vessel for coastal migratory pelagic fish, may continue to retain fish under a bag and possession limit specified in § 642.24(a)(1) and (a)(2) provided the vessel is operating as a charter vessel.

(3) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of king or Spanish mackerel of the closed species, migratory group, zone, sub-zone, or gear type is prohibited.

This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and sold, traded, or bartered prior to the closure and held in cold storage by dealers or processors.

6. Section 642.31 is removed; §§ 642.28 through 642.30 are redesignated as §§ 642.29 through 642.31; and new § 642.28 is added to read as follows:

**§ 642.28 Additional limitations for Gulf group king mackerel in the eastern zone.**

(a) *Florida east coast sub-zone.* In the Florida east coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4,

(1) From November 1, each fishing year, until 50 percent of the sub-zone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day; and

(2) From the date that 50 percent of the sub-zone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast sub-zone has been effected under § 642.26—in amounts not exceeding 25 king mackerel per day.

(b) *Florida west coast sub-zone.* (1) In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4,

(i) From July 1, 1994, until 75 percent of the sub-zone's fishing year quota of king mackerel has been harvested—in unlimited amounts of king mackerel; and

(ii) From the date that 75 percent of the sub-zone's fishing year quota of king mackerel has been harvested until a closure of the Florida west coast sub-zone has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

(2) In the Florida west coast sub-zone,

(i) King mackerel in or from the EEZ may be possessed aboard or landed from a vessel that uses or has aboard a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement; and

(ii) King mackerel from the west coast sub-zone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 642.25(a)(1)(i)(B)(2).

(c) *Notice of trip limit changes.* The Assistant Administrator, by filing a notice with the Office of the Federal

Register, will effect the trip limit changes specified in paragraphs (a) and (b)(1)(ii) of this section when the requisite harvest levels have been reached or are projected to be reached.

(d) *Combination of trip limits.* A person who fishes in the EEZ may not combine a trip limit of this section with

any trip or possession limit applicable to state waters.

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a) or (b)(1)(ii) of this section or a gear limitation specified in paragraph (b)(2) of this section applies may not transfer

at sea from one vessel to another a king mackerel—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such king mackerel was taken.

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